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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/888,246	06/22/2001	John C. Parks	FR-6842-C	9114

7590 05/07/2002
ALBEMARLE CORPORATION
451 FLORIDA STREET
BATON ROUGE, LA 70801

EXAMINER

BADIO, BARBARA P

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 05/07/2002

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/888,246

Applicant(s)

PARKS ET AL.

Examiner

Barbara P Badio, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other:

Final Office Action on the Merits

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

2. **The rejection of claims 6 and 7 under 35 USC 102(e) over Mack et al. ('248) is maintained.**

Applicant argues that the reference does not disclose or suggest occluded free bromine content as recited by the instant invention. Applicant also states that "hydrolysable bromine" differs from "occluded free bromine". Applicant's argument was considered.

Even if the examiner agrees with applicant's statement that hydrolysable and occluded bromine are not the same, the ordinary artisan would have the reasonable expectation that the product taught by the prior art would contain some occluded bromine. In addition, the prior art product and that of the present invention have similar components as well as similar yellowness index (see examples 2-4). Because the reference is silent, as the amount of occluded bromine does not imply that the prior art product does not contain said bromine in the amount recited by the instant claims.

For this reason and those given in Paper No. 3, the rejection of claims 6 and 7 under 35 USC 102(e) over Mack et al. ('248) is maintained.

Claim Rejections - 35 USC § 103

3. The rejection of claims 1-30 under 35 USC 103(a) over Mack et al. ('248) is maintained.

Some of applicant's argument and the examiner's response are as discussed above in #2. In addition, applicant argues examples 1 and 5 are powerful testimonies to the high occluded free bromine content of the undried wet cake of the prior art and that the other examples having lower YI do not relate to the original YI of the wet cake. Applicant's argument was considered but not persuasive for the following reasons.

The process of making a product does not determine the patentable of that product. In addition, Mack teaches that roasting or oven-ageing does not achieve excellent product color (see col. 7, lines 31-37). The reference teaches reduction in the yellowness index of the brominated diphenylalkane product by contacting with an aromatic solvent (see col. 1, lines 48-64).

Based on the products of the prior art having low YI and identical components as recited by the instant invention, the ordinary artisan in the art would have the reasonable expectation that the occluded bromine content of these products would also be similar to that of the claimed invention. Applicant has not provided any evidence of record showing that the products of the prior art do not have similar occluded bromine content.

In regards to the claimed wet cakes of the instant invention, as stated above, Mack teaches that the precipitate obtained after contacting the brominated diphenylalkane product with an aromatic solvent has improved color. For example,

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example 6 of Mack discloses obtaining white crystals even before drying overnight in the oven. Even though, an analysis of the wet cake is not given, there is no evidence of record that the YI of said cake is not as recited by the instant invention.

For these reasons and those given in Paper No. 3, the rejection of claims 1-30 under 35 USC 103(a) over Mack et al. ('248) is maintained.

4. The rejection of claims 5-30 under 35 USC 103(a) over Parks ('890) is withdrawn.

It is noted that the rejection is not over Mack et al. ('248) in view of Parks. The rejection is withdrawn in light of applicant's statement that the inventions (i.e., Parks and the present invention) were commonly owned by Albemarle Corporation at the time of the present invention.

Conclusion

5. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Telephone Inquiry

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barbara P Badio, Ph.D. whose telephone number is 703-308-4595. The examiner can normally be reached on M-F from 7:30am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703-308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 703-308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.


Barbara P Badio, Ph.D.
Primary Examiner
Art Unit 1616

BB
May 6, 2002